

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ELI HYNES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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Civ. No. 20-2308 (PGS)

MEMORANDUM & ORDER

Petitioner is a federal prisoner proceeding *pro se* with a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. On June 16, 2020, this Court ordered Petitioner to show cause within thirty days why his § 2255 motion should not be dismissed as untimely. (*See* ECF 9 & 10). This Court received Petitioner's response to the order to show cause on July 17, 2020.¹ (*See* ECF 12).

Given Petitioner's statements in his response, this Court does not find it appropriate to necessarily dismiss Petitioner's § 2255 motion as untimely at screening. Instead, Respondent shall be ordered to respond to Petitioner's § 2255 motion. In any response Respondent files, it is free to argue Petitioner's § 2255 motion is untimely as nothing in this memorandum and order should be construed as an affirmative finding by this Court that Petitioner's § 2255 motion is in fact timely.

If Respondent argues in its response that this action is untimely, Respondent shall specifically address Petitioner's argument in his response to the order to show cause that letter purportedly sent by Petitioner to this Court executed February 2, 2019 makes this action timely.

¹ The Clerk entered Petitioner's response to the order to show cause as a motion not to dismiss this action. However, it should have been docketed as a response to the order to show cause not as a motion. Accordingly, to the extent this filing constitutes a motion rather than a response, the motion will be administratively terminated.

Accordingly, IT IS on this 17th day of May, 2021,

ORDERED the Clerk shall administratively terminate Petitioner's motion not to dismiss this action (ECF 12) as it is more properly labeled a response to the order to show cause; and it is further

ORDERED that within forty-five (45) days of the date of the entry of this order, the United States shall electronically file and serve an answer to the § 2255 motion; and it is further

ORDERED that the answer shall respond to the allegations and grounds of the motion and shall adhere to Rule 5 of the Rules Governing Section 2255 Proceedings; and it is further

ORDERED that the answer shall address the merits of each claim raised in the motion; and it is further

ORDERED that the answer shall contain an index of exhibits; and it is further

ORDERED that if the answer refers to briefs or transcripts, orders, and other documents from prior proceedings, then the United States shall serve and file them with the answer; and it is further

ORDERED that Petitioner may serve and file a reply to the answer within forty-five (45) days after the answer is filed; and it is further

ORDERED that the Clerk shall serve this order on Petitioner by regular U.S. mail.

s/Peter G. Sheridan
PETER G. SHERIDAN, U.S.D.J.